

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	)
Norbert Wolters et al	) Group: 3671
Serial No.: 09/727,134	)
Filed: November 30, 2000	)
Title: ROW INSENSITIVE GATHERING DEVICE	) Examiner: Arpad F. Kovacs
FOR AN AGRICULTURAL HEADER	)

REPLY BRIEF OF APPELLANT

Box Appeal Brief- Patents  
Commissioner for Patents  
Alexandria, VA 22313-1450

Sir:

Responsive to the Examiner's Reply dated August 29, 2007, Appellants submit the following Reply Brief.

GROUND OF REJECTION

1. Whether claims 1-7 and 20-24 are unpatentable over PCT filing WO 99/03323 (Wiegert) in view of U.S. Patent No. 2,777,267 (Thompson) and Great Britain Patent No. GB 2012154 (Pottinger et al.).

### ARGUMENTS

The following remarks are submitted in supplement to the arguments submitted in the Revised Appeal Brief of Appellants filed on May 10, 2007. Accordingly, the following remarks should be taken in conjunction with the arguments previously submitted and not as a replacement thereof. The following remarks are submitted responsive to the Examiner Answer.

#### **The Examiner's Contentions**

While the Examiner has indicated that the rejection based on the assertion that the teaching of Wiegert includes the substitution by any other known device has been removed, the Examiner has continued to assert that elements of Pottinger et al. and/or Thompson can be substituted for a feeding device of Wiegert. Further, the Examiner has developed and asserted that a midpoint between chain links that are traveling in opposite parallel directions is a vertical axis about which the elements attached to the chain links are being rotated.

#### **Appellants' Arguments**

In order for the Examiner to use the Wiegert reference the Examiner has defined a vertical axis between parallel or quasi-parallel running links of a chain drive to define a point about which feeding elements rotate about a circle. This interpretation distorts the clear meaning of the words as commonly used, and as those words are used in Appellants' specification. The rotation of the feeding element in a circle about a vertical axis is shown in Appellants' figures, which is what is claimed in the independent claims. If choppers 20 of Wiegert are considered to be feeding elements they can only be described as moving in a semi-circular fashion at a forward point over approximately 180° as they rotate into a position to perform their needed function. The rotation through 180° cannot be described as being rotated in a circle, since a circle is commonly

understood to be a rotation about  $360^\circ$ . The definition of a circle includes a defined radius without allowing for any parallel sides or in this case movement in a parallel manner. To allow redefinition of what is meant to be rotated in a circle to allow parallel or quasi-parallel movement of a linked chain drive of choppers that change directions with a  $180^\circ$  rotation, does violence to the clear meaning of the words of being “rotated in a circle about a vertical axis”. Further, the rotating feeding element is described as having a body with outwardly extending fingers. A body is singular and describes the construction of Appellant’s invention. The chain link construction of Wiegert can be accurately described as a plurality of links that are connected together but can hardly be considered as a singular body. The location of the artificially positioned axis does not define a point about which anything rotates in Wiegert, since the radius from the point indicated by the Examiner to the location of catches 20 would require the catches to have a movement along an arc that corresponds to the radius from the “axis” indicated by the Examiner all the way to the left part of the illustration, which is clearly not the path traveled by catches 20 over any portion of their travel.

Thompson has two generally vertical shafts 32 from which fingers 37 extend, which are disposed completely in front of two generally vertical shredder cylinders 23. The cylinders are not a “picking device” since the Thompson system is used to shred cotton plant stalks after the cotton crop has already been picked and separated. The purpose of Thompson is to uproot the remnants of plants and feed them into a shredding mechanism on the implement, which then throws the shredded plants onto the ground in a scattered condition. Even assuming that cylinders 23 are a picking device, shafts 32 and fingers 37 do not support the plant stalk throughout the effective length of the shredder cylinders as claimed by Appellants. Pottinger et al. teaches an apparatus for picking up, cutting off and conveying stalk plants to the infeed of a harvesting machine such as a maze chopper. The “picking device, which separates usable parts from plant

stalks” is not disclosed in Pottinger et al. If it could be construed to exist they would be located well to the rear of Pottinger et al.’s pickup wheels 1 and 2.

None of the cited references disclose a “picking device ... with an inlet ... located in front of the vertical axis of the feeding element”. Wiegert has no vertical axis of rotation in a circle of a feeding element that can be used as a reference to locate the positioning of any devices, which may be appropriately combined therewith. Without this vertical axis the positioning of another mechanism cannot be adequately defined. Further, Thompson has no “picking device which separates useable parts from plant stalks” which thereby limits Thompson from having an inlet relative to a non-existent picking device that could then be combined with another reference to utilize an axis of Thompson so that it could be appropriately located in a combined machine. Still further, Pottinger et al. has no “picking device which separates usable parts from plant stalks” and likewise has no inlet, to which a picking device could be located relative to. .

For all the foregoing reasons and those contained in Appellants’ Brief of May 10, 2007, Applicants respectfully request that the Board reverse the final rejection of the appealed claims.

Should any question concerning any of the foregoing arise, the Examiner is invited to telephone the undersigned at (260) 897-3400.

Respectfully submitted,

/Max W. Garwood/

Max W. Garwood  
Registration No. 47,589  
Attorney for Appellant

MWG/dc/bd

TAYLOR & AUST, P.C.  
142 S. Main Street  
P.O. Box 560  
Avilla, IN 46710  
Telephone: 260-897-3400  
Facsimile: 260-897-9300

**Electronically filed October 29, 2007**